

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.197 & 198/PUN/2024
निर्धारण वर्ष / Assessment Years : 2017-18 & 2019-20

Solapur Construction & Fabrication Pvt. Ltd., E-1, Mantrichandak Park, Opp. Mayur Mangal Karyalaya Bijapur Road, Solapur- 413004. PAN : AACCS5566L	Vs.	DCIT, Circle-1, Solapur.
Appellant		Respondent

Assessee by : Shri Piyush Bafna &
Shri Aakash Parakh
Revenue by : Shri Akhilesh Srivastava
Date of hearing : 02.07.2024
Date of pronouncement : 09.07.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

Both the above captioned appeals filed by the assessee are directed against the separate orders dated 06.12.2023 and 14.02.2023 passed by Ld CIT(A)/NFAC for the assessment years 2017-18 and 2019-20 respectively.

2. Since both the appeals were heard together, therefore, we proceed to dispose of both the appeals by this common order.

3. First, we shall take up the appeal of the assessee in ITA No.197/PUN/2024 for A.Y. 2017-18 for adjudication.

ITA No.197/PUN/2024, A.Y. 2017-18 :-

4. The appellant raised the following grounds of appeal :-

- “1. *On the facts and in the circumstances of the case and in law, the orders passed by Ld. CIT(A) and/or Ld. AO are bad in law and hence, the same may please be quashed.*
2. *On the facts and in the circumstances of the case and in law and without prejudice to other grounds, Ld. CIT- Appeals without properly considering the merits of the case has merely upheld the action of Ld. AO by passing the cryptic order and, hence the said order passed by Ld. CIT - Appeals may please be quashed.*
3. *On the facts and in the circumstances of the case and in law and without prejudice to other grounds, Ld. CIT(A) has erred in upholding the addition of Rs. 10,32,586/- made by Ld. AO under the head Business Income by reclassifying the same from the income under the head Capital Gain and thus, the same may please be quashed and the characterization of income as capital gains and consequently the returned income may be accepted.*
4. *On the facts and in the circumstances of the case and in law and without prejudice to other grounds, Ld. CIT(A) has erred upholding the disallowance of expenditure of Rs 2,81,668/- u/s 40(a)(ia) of the Act as made by Ld. AO and hence, the same may please be quashed.*
5. *On the facts and in the circumstances of the case and in law and without prejudice to other grounds, Ld. AO has erred in computing the total income at Rs 2,05,11,103 in the computation sheet as against the assessed total income of Rs 1,98,80,020 determined by Ld. AO and accordingly, the addition by made Ld. AO is even if to be sustained, the total income of the appellant*

may kindly be directed to be assessed correctly as per the assessment order at Rs 1,98,80,020.

6. *The appellant craves leave to add, amend, modify, alter, revise, substitute, or not press any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal, in the interest of justice.”*

5. The facts, in brief, are that the assessee is a private limited company and is engaged in the business of government civil contract work. The assessee filed return of income on 25.11.2017 declaring income of Rs.1,95,98,350/-. The assessment was completed u/s 143(3) of the IT Act vide order dated 30.12.2019 determining total income of Rs.1,98,80,020/-.

6. Since the assessee remained absent in the first appeal, the ld. CIT(A)/NFAC dismissed the appeal of the assessee *ex-parte*.

7. Being aggrieved with the decision of the ld. CIT(A)/NFAC, the assessee is in appeal before this Tribunal.

8. Ld. AR submitted before us that the *ex-parte* order passed by the ld. CIT(A)/NFAC is bad in law because there was sufficient and reasonable cause for not appearing on the dates of hearing. It was further submitted that the assessee handed over all the documents to Mr. M. Patil, Advocate to appear on the date of hearing. But, due to a car accident which took place on August 2022, the daughter and

grand-daughter of Mr M. Patil Advocate, died, and his son was remained admitted in the hospital for further four months and therefore Mr. M. Patil, Advocate was not in good mental health so he could not inform the assessee to appoint another counsel to appear before Id. CIT(A)/NFAC. When the *ex-parte* order reached to the assessee he enquired from Mr. M. Patil, Advocate, regarding his non-presence before Id. CIT(A)/NFAC. Then Mr. M. Patil, Advocate described the unfortunate happening in his family and provided an affidavit in support of the contentions raised before us which is placed before us. Under the above facts and in the circumstances, the counsel of the assessee prayed before the Bench to provide him another opportunity of hearing before Id. CIT(A)/NFAC so that he can produce documents in support of grounds of appeal.

9. Ld. DR supported the orders of the subordinate authorities and prayed to confirm the same.

10. We have heard LD Counsels from both the sides & perused the material available on the record. We find that LD CIT(A)/NFAC has issued total 7 notices to the assessee to

substantiate his case. Out of these, 2 notices were issued during Covid-19 pandemic period. It is the submission of the counsel of the assessee that the first appeal was filed by Mr. M. Patil, Advocate & all the relevant documents were handed over to him by the assessee. But due to a car accident in August, 2022 the daughter & granddaughter of Mr. M. Patil, Advocate died & his son got admitted in the hospital for more than 4 months. Due to all these unfortunate incidents, Mr. M. Patil, Advocate was not in sound mental health & therefore neither attended the hearings provided by LD CIT(A)/NFAC nor informed the assessee to appoint another counsel. An affidavit duly sworn in by Mr. M. Patil, Advocate is also furnished before the bench wherein all these facts have been admitted by Mr. M. Patil, Advocate. Thereafter, all the relevant documents were handed over to a new appointed CA, Mr. Piyush Bafna who is now representing the case from the side of the assessee. We find force in the arguments of the counsel of the assessee that the *ex-parte* order passed by LD CIT(A)/NFAC is bad in law & there was reasonable cause in not complying with the statutory notices issued by LD CIT(A)/NFAC. Considering the

totality of the facts, without going into merits of the case, we deem it appropriate to set-aside the *ex-parte* order passed by LD CIT(A)/NFAC with a direction to decide the appeal afresh on merits of the case after providing reasonable opportunity of hearing to the assessee. LD CIT(A)/NFAC shall pass order as per facts & law after providing reasonable opportunity of being heard to the assessee. The assessee is also directed to respond on the date fixed for hearing & explain his case without taking adjournment under any pretext other-wise LD CIT(A)/NFAC is free to pass appropriate order as per law. Thus, the grounds raised in the appeal of the assessee are allowed.

11. In the result, the appeal of the assessee in ITA No.197/PUN/2024 is allowed for statistical purpose.

12. Now, come to another appeal of the assessee in ITA No.198/PUN/2024 for A.Y. 2019-20.

ITA No.198/PUN/2024, A.Y. 2019-20 :

13. The assessee raised the following grounds of appeal :-

“1. On the facts and in the circumstances of the case and in law, the order passed by Ld. CIT(A) is bad in law and hence, the same may please be quashed.

2. *On the facts and in the circumstances of the case and in law, the intimation order passed by Ld. CPC, Bangalore u/s 143(1) is bad in law and hence, the same may please be quashed.*
3. *On the facts and in the circumstances of the case and in law and without prejudice to other grounds, the appellate order passed by Ld. CIT(A) is invalid, bad-in-law inasmuch as Ld. CIT(A) has erred in not adjudicating the ground of appeal related to the addition of Rs. 49,20,203/- made by Ld. CPC, Bangalore in relation to VAT and GST payable and thus, the same may please be quashed.*
4. *On the facts and in the circumstances of the case and in law and without prejudice to other grounds, the addition of Rs. 49,20,203/- made by Ld. CPC, Bangalore is bad-in-law and hence, the same may please be deleted and set aside.*
5. *The appellant craves leave to add, amend, modify, alter, revise, substitute, or not press any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal, in the interest of justice."*

14. The return of income was filed on 17.12.2019 which was processed by CPC on 07-05-2020. While processing the return, the CPC made two *prime-facie* additions amounting in all to Rs.51,17,630/-, out of which Rs.1,97,420/- pertains to employees' PF contribution and Rs.49,20,203/- pertains to disallowance regarding VAT, CGST and SGST payable for A.Y. 2018-19 but paid during the year.

15. Since the assessee remained absent in first appeal hearing, Ld. CIT(A)/NFAC decided the appeal *ex-parte* and confirmed the disallowance on account of PF contribution of Rs.1,97,420/- on the basis of judgement dated 12.10.2022 passed by Hon'ble Supreme

Court in the case of Checkmate Services Private Limited. However, the ld. CIT(A)/NFAC failed to adjudicate the issue pertaining to disallowance of Rs.49,20,203/- on account of VAT, CGST and SGST payable for A.Y. 2018-19 but paid during the year due to inadvertent error the allowable amount could not be shown in Form 3CD Audit Report, which is challenged before us in this appeal.

16. We have heard ld. Counsels from both the sides and perused the material available on record. From perusal of the impugned order, we find that LD CIT(A)NFAC has not adjudicated the ground regarding disallowance of VAT, CGST & SGST payable for A.Y. 2018-19 but paid during the year. The ld. CIT(A)/NFAC fell in serious error in not deciding the said grounds of appeal raised by the assessee before him, although the ground was mentioned on page 407 of first appeal order. We therefore find force in the arguments of the counsel of the assessee that the *ex-parte* order passed by LD CIT(A)/NFAC is bad in law to the extent of not adjudicating the above ground. Considering the totality of the facts, without going into merits of the case, we deem it appropriate to remand the matter back to the file of LD CIT(A)NFAC with a direction to decide the

ground of appeal regarding disallowance of VAT, CGST & SGST payable for A.Y. 2018-19 but paid during the year after providing reasonable opportunity of hearing to the assessee. LD CIT(A)/NFAC shall pass order as per facts & law after providing reasonable opportunity of being heard to the assessee. The assessee is also directed to respond on the date fixed for hearing & explain his case without taking adjournment under any pretext other-wise LD CIT(A)/NFAC is free to pass appropriate order as per law. We order accordingly.

17. In the result, the appeal of the assessee in ITA No.198/PUN/2024 is allowed for statistical purposes.

18. To sum up, both the above captioned appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 09th day of July, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09th July, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.